

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

LEIBA RYBAK
and
ROSE BERNSTEIN

Claim No. CU -0521

Decision No. CU -6811

Under the International Claims Settlement
Act of 1949, as amended

Appeal and objections from a Proposed Decision entered September 8, 1971.

Oral hearing requested and held October 20, 1971.

FINAL DECISION

The Commission entered its Proposed Decision in this matter on September 8, 1971, certifying a loss to claimant in the amount of \$5,989.74 for his interests in realty, and merchandise shipped to Cuba, and denying so much of the claim as was based on an asserted interest in a partnership. Objections were entered and oral hearing requested.

At the oral hearing held on October 20, 1971, the Commission received testimony from the claimant, and additional evidence has been submitted.

The Commission now finds that the partnership known as Moises Levin y Cia. was taken by the Government of Cuba on October 24, 1960; and that claimant's ownership interest therein consisted of \$100,000 of the total original capitalization of \$252,661.68. Further, at the time of loss the partnership had a value of \$260,000. This represents a profit of \$7,338.32, in which claimant had a 25% interest according to the partnership agreement.

Claimant's former spouse, a national of the United States since 1933, had a one-half interest in claimant's properties in Cuba, pursuant to the community property law of Cuba. She died intestate in Florida, in 1970, survived solely by claimant and a daughter ROSE BERNSTEIN, who have inherited the interests of the late Riva Rybak. Accordingly, ROSE BERNSTEIN has been added as claimant in this matter.

Claimants' losses are now summarized as follows:

<u>Item</u>	<u>Date of Loss</u>	LEIBA RYBAK	ROSE BERNSTEIN
Partnership interest	October 24, 1960	\$75,000.00	\$25,000.00
Profit of above	October 24, 1960	1,375.93	458.65
Merchandise shipped	April 6, 1960	4,004.19	--
	July 28, 1960	225.00	--
Realty	December 6, 1961	<u>2,640.82</u>	<u>880.28</u>
		\$83,245.94	\$26,338.93

The Commission affirms its holding that interest shall be included in Certifications of Loss, and it shall be included as follows:

	<u>FROM</u>	<u>ON</u>
LEIBA RYBAK	October 24, 1960	\$76,375.93
	April 6, 1960	4,004.19
	July 28, 1960	225.00
	December 6, 1961	<u>2,640.82</u>
		\$83,245.94
ROSE BERNSTEIN	October 24, 1960	\$25,458.65
	December 6, 1961	<u>880.28</u>
		\$26,338.93

Accordingly, the Certification of Loss in the Proposed Decision is set aside, the following Certifications of Loss will be entered, and in all other respects, the Proposed Decision as amended herein, is affirmed.


CERTIFICATIONS OF LOSS

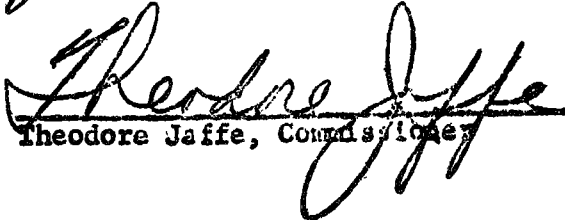
The Commission certifies that LEIBA RYBAK suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Eighty-Three Thousand Two Hundred Forty-Five Dollars and Ninety-Four Cents (\$83,245.94) with interest thereon at 6% per annum from the aforesaid dates of loss to the date of settlement; and

The Commission certifies that ROSE BERNSTEIN suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Twenty-Six Thousand Three Hundred Thirty-Eight Dollars and Ninety-Three Cents (\$26,338.93) with interest thereon at 6% per annum from the aforesaid dates of loss to the date of settlement.

Dated at Washington, D. C.,
and entered as the Final
Decision of the Commission

OCT 20 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

**FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579**

IN THE MATTER OF THE CLAIM OF

LEIBA RYBAK

**Under the International Claims Settlement
Act of 1949, as amended**

Claim No. CU-0521

Decision No. CU 6811

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$110,729.19, was presented by LEIBA RYBAK and is based upon the asserted loss of certain real and personal property including an interest in a partnership and loss of payment for merchandise shipped. Claimant has been a national of the United States since his naturalization in 1943.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964) 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term "property" means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated,

intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (1970).)

Claimant describes his loss as follows:

Interest in a partnership	\$100,000.00
Interest in realty in Havana	6,500.00
Payment for merchandise shipped	<u>4,229.19</u>
	\$110,729.19

Partnership Interest

The record discloses that claimant had been operating a business out of New York, shipping merchandise to customers in Cuba. In this fashion one Moises Levin accumulated a debt to claimant in the amount of \$100,000. Moises Levin operated "La Casa de los Molinos" in Cuba. In May 1959, claimant and Moises Levin entered into a partnership agreement, the partnership to be known as Moises Levin y Cia., and the purpose to operate the above-mentioned business establishment.

The contribution of Moises Levin was described as 252,661.68 pesos, represented by the net capital of the said business establishment. Claimant was to contribute 100,000 pesos represented by the amount due him from the said business establishment, the figure being reflected in a Financial Statement of December 31, 1958, for Moises Levin. Further, claimant stated, in said Agreement, that by virtue of his contribution he had no further claim on the account for that sum owed by Mr. Levin. The agreement made provision for personal expenses and that profits or losses would be distributed 75 per cent to Moises Levin, and 25 per cent to claimant.

Moises Levin has stated that when he left Cuba in October, 1960, the net asset value of the business was over \$260,000. Claimant has submitted a copy of a letter he wrote on June 10, 1965, to the Internal Revenue Service, on behalf of Moises Levin, in which he states, inter alia, that each partner was to

be paid \$10,000 yearly, as well as the percentages of profits described in the Agreement; and reciting that when Mr. Levin left Cuba in October the net asset value of the business was over \$260,000.

However, the record does not include any balance sheets, financial statements or other documentation to establish the asserted value of the new partnership business in October 1960. The record shows that claimant's credit of \$100,000 was cancelled in exchange for a percentage of any profits the business might make in future. However, any finding the Commission could make as to the asset value of the business in October 1960 could only be conjectural and speculative. Accordingly this item of claim must be and is denied.

Interest in Realty

The record contains copies of three contracts which reflect that claimant and Mr. Levin jointly purchased three lots in a development in Guanabacoa in April, 1958. Based on this evidence and all other evidence of record, including cancelled checks and receipts, the Commission finds that claimant and Mr. Levin jointly owned these lots. Pursuant to the Community Property Law of Cuba, claimant's wife, Riva Rybak acquired a 1/2 interest in her husband's 50% interest in this real property. Since the United States nationality of claimant's wife has not been established her one-half interest in her husband's interest in the real property cannot be considered.

On December 6, 1961, the Cuban Government published its Law 989 which effectively confiscated all assets, personal property and real estate, rights, shares, stocks, bonds and securities of persons who had left the country. The record reflects that claimant's joint owner, Mr. Levin, left Cuba in October, 1960.

The Commission finds, in the absence of evidence to the contrary, that the subject real property was taken by the Government of Cuba on December 6, 1961 pursuant to the provisions of Law 989. (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [July-Dec. 1966].)

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or

interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value or cost of replacement.

The aforementioned copies of contracts and receipts reflect that the three lots were subject of installment sales providing for down payment and 60 monthly installments beginning April 1, 1958. The Commission finds that claimant and Mr. Levin had made down payments and installments in the aggregate amount of \$7,042.18. The Commission therefore finds that claimant suffered a loss of \$1,760.55 for his 1/4 interest in this realty within the meaning of Title V of the Act.

Merchandise Shipped

The record discloses that claimant had shipped merchandise to Moises Levin and Company in September 1959 having a value of \$4,004.19 including shipping and other costs, and that this amount had been paid to Banco Continental Cubano and another sum in the amount of \$225.00 had been so paid on July 28, 1960.

The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter the Cuban Government effectively precluded not only transfers of funds to creditors abroad, but also payment to creditors within Cuba, by numerous, unreasonable and costly demands upon the consignees, who were thus deterred from complying with the demands of the Cuban Government. The Commission holds that Cuban Law 568 and the Cuban Government's implementation thereof, with respect to the rights of the claimant herein, was not in reality a legitimate exercise of sovereign authority to regulate foreign exchange, but constituted an intervention by the Government of Cuba in the contractual rights of the claimant, which resulted in the taking of American-owned property within the meaning of Section 503(a) of the Act. (See Claim of The Schwarzenbach Huber Company, Claim No. CU-0019, 25 FCSC Semiann. Rep. 58 [July-Dec. 1966]; and Claim of Etna Pozzolana Corporation, Claim No. CU-0049, 1967 FCSC Ann. Rep. 46.)

Accordingly, in the instant claim, the Commission finds that the afore-said sums totalling \$4,229.19 were lost as a result of intervention by the Government of Cuba, and that in the absence of evidence to the contrary, the loss of \$4,004.19 occurred on April 6, 1960 and the loss in connection with \$225.00 occurred on July 28, 1960.

Summary

Claimant's losses are summarized as follows:

<u>Item</u>	<u>Date of Loss</u>	<u>Amount</u>
Merchandise shipped	April 6, 1960	\$4,004.19
	July 28, 1960	225.00
Realty	December 6, 1961	<u>1,760.55</u>
		\$5,989.74


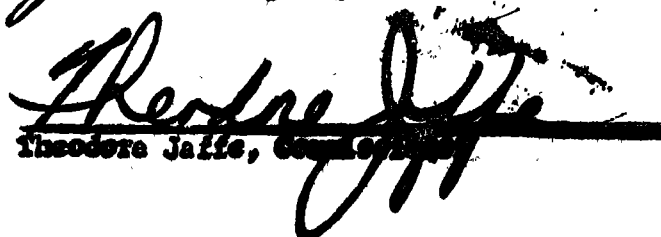
The Commission has decided that in certifications of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644) and in the instant case it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that LEIBA RYBAK suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Five Thousand Nine Hundred Eighty-Nine Dollars and Seventy-Four Cents (\$5,989.74) with interest thereon at 6% per annum from the aforesaid dates of loss to the date of settlement.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

SEP 8 1971


Paul S. Corleau, Chairman

Theodore Jaffe, Counsel

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended (1970).)